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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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JUN 03 2004

FILE:

Office: LOS ANGELES

Date:

IN RE:

Obligor:

Bonded Alien:

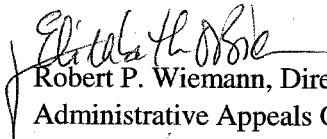
IMMIGRATION BOND:

Bond Conditioned for Voluntary Departure under § 240B of the Immigration
and Nationality Act, 8 U.S.C. § 1229c

ON BEHALF OF OBLIGOR: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The voluntary departure bond in this matter was declared breached by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that on March 22, 1999, the obligor posted a \$500.00 bond conditioned for the voluntary departure of the above referenced alien. An order of the immigration judge (IJ) dated March 18, 1999 was issued granting the alien voluntary departure in lieu of removal on or before May 17, 1999. The bonded alien appealed the IJ's decision to the Board of Immigration Appeals (BIA). The alien also filed a motion to remand. On August 30, 2002, the BIA affirmed, without opinion, the IJ's decision, and granted the alien voluntary departure within 30 days from the date of the order. The BIA also denied the alien's motion to remand. On January 31, 2003, the district director concluded the bond had been breached. The alien has failed to depart.

Counsel asserts that because ICE failed to notify the obligor of the new voluntary departure date, the obligor was not given a reasonable opportunity to perform under the bond contract. Counsel argues that any change in the terms of the bond agreement, no matter how trivial, discharges the obligor from the contract, citing *Reese v. United States*, 76 U.S. 13 (1869). Counsel's argument is without merit.

The facts in *Reese* involved the breach of a recognizance bond. The court noted that recognizance bonds differ from other bonds in that the surety can discharge its obligation at any time by surrendering the beneficiary of the bond or upon the beneficiary's death. On the other hand, the court stated, other bonds are discharged only by payment of the debt or performance of the act stipulated. The court went on to say, however, that the surety's liability is limited to the precise terms of its contract and that any change in the contract made without its assent discharges it from the contract.

Later decisions have refined and narrowed the *Reese* holding, finding that the obligor is released from its obligations only if the modifications to the contract materially increase the surety's risks. *See e.g., U. S. v. Martinez*, 151 F.3d 68 (2nd Cir. 1998) (failure of the government to inform surety of defendant's plea offer and subsequent plea did not materially increase the obligor's risk); *U. S. v. Gambino*, 17 F.3d 572 (2nd Cir. 1994) (removal of electronic bracelet did not materially increase the risk of flight and failure to notify surety of its removal did not materially increase surety's risk); *U.S. v. Craft*, 763 F.2d 402 (11th Cir. 1985) (failure of the government to notify surety of show cause hearing to reconsider the terms of the bond did not materially increase the surety's risk); and *U.S. v. Stuyvesant Insurance Company*, 410 F.2d 524 (8th Cir. 1969) (court's permission to defendant to travel outside the judicial district did not make it impossible for the surety to perform).

The obligor in the present case has not shown how the later date granted for voluntary departure materially increased its risk. The obligor contracted to "ensure[] that the alien departs the United States on or before the date specified in the order granting voluntary departure, and provide[] probative documentation of the departure." The obligor was aware that the bonded alien had a voluntary departure date of May 17, 1999; however, the record does not reflect and the obligor does not allege that it attempted to ensure the alien departed by the date specified in the IJ's order.

The bond at issue in the *Stuyvesant* case stated that the beneficiary was not to leave the jurisdiction of the court without the court's permission. After the court granted the defendant's request to travel to her home outside of the court's location, the surety argued that the court enlarged the terms of the bond agreement without the consent or knowledge of the surety. It argued that by doing so, the court increased the surety's

risk, making it impossible for the surety to perform. The court held that the surety was on notice that the court had the authority to enlarge the area where the defendant could travel. It also stated that the surety did not have to be notified each time the principal was to appear in court, "but instead should keep itself posted on when the principal is to appear in order to keep itself informed of any changes made by the court in accordance with the terms and purpose of the bond." We note that the order of the IJ specifically indicated that the bonded alien had the right to appeal the order of voluntary departure. Thus the obligor was on notice at the time of entering into the bond contract that the date of the voluntary departure was subject to further review.

The obligor asserts that it should be relieved of its obligations under the bond contract because ICE did not provide it with a copy of the BIA's decision. In *U.S. v. Craft* the court held that where the bond agreement does not require the surety to be notified of the beneficiary's court appearances, the obligor is in breach of the bond if the beneficiary does not appear even though the surety was not notified of the appearance. In the *Gambino* case, the lower court held that the government was not obligated to inform the surety of the defendant's court appearances or the nature of those appearances, as there was no requirement in the bond agreement to do so. *U.S. v. Gambino*, 809 F. Supp. 1048, 1058 (S.D.N.Y. 1992). The Form I-352, Immigration Bond, does not require ICE to provide the obligor with a copy of the final order of voluntary removal.

The regulation at 8 C.F.R. § 1240.26(c)(3) provides that in order for the voluntary departure bond to be cancelled, the alien must provide proof of departure to the district director.

No satisfactory evidence has been introduced into the record to establish the alien made a timely departure. The service of a notice to surrender or the presence of a certified mail receipt is not required in voluntary departure bond proceedings.

Voluntary departure bonds are exacted to ensure that aliens will depart when required in lieu of removal. Such bonds are necessary in order for ICE to function in an orderly manner. After a careful review of the record, it is concluded that the alien failed to depart by the stipulated time, the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the field director will not be disturbed.

ORDER: The appeal is dismissed.